

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10230 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

=====

1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SG KADIA, SINCE DECEASED THROUGH HEIRS & LEGAL R.

Versus

O N G C

Appearance:

1. Special Civil Application No. 10230 of 1993
MR YN OZA for Petitioner No. 1-1/5
M/S TRIVEDI & GUPTA for Respondent No. 1-2
MR RAKESH GUPTA for Respondent No. 1-2
-

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 07/04/2004

ORAL JUDGEMENT

The petitioner, S.G. Kadia, (deceased) who was working as Ex.Engineer (Mechanical) with the respondent O.N.G.C., had preferred the present Special Civil Application under Article 226 of the Constitution of India for declaring sub-regulation (4) of Regulation 25

of Oil & Natural Gas Commission (Terms & Conditions of Appointment & Service) Regulations, as unconstitutional, arbitrary and unreasonable and also for quashing and setting aside the order dated 25.6.1993 and for a declaration that the petitioner continued in service as if the order of premature retirement was not passed. Alternatively the petitioner had also prayed for an appropriate direction directing the respondents to accept the notice for voluntary retirement dated 22.4.1993.

2. As the petitioner died during the pendency of the petition, his heirs and legal representations were brought on record as per order dated 18.7.1998 passed by this Court in Civil Application No. 12462 of 1997.

3. Originally, the petitioner, S.G. Kadia was serving as Engineer (Mechanical) with O.N.G.C. That according to the O.N.G.C., as he was not physically fit and was required to be declared as invalid he was sent for medical checkup before Medical Board and on the basis of the opinion given by the Medical Board he was required to be prematurely retired under the provisions of Oil & Natural Gas Commission (Terms and Conditions of Appointment and Service) Regulations [hereinafter referred to as "the Regulations") and therefore proceedings were initiated to prematurely retire him. However, before any final decision could be taken to prematurely retire the petitioner, the petitioner in the mean time submitted an application for voluntary resignation on 22.4.1993 and inspite of the said application and without considering the application for voluntary retirement, an order dated 25.6.1993 came to be passed by the respondents prematurely retiring the petitioner with effect from 30th September 1993 and the petitioner was not permitted to voluntarily retire, which has given rise to the present Special Civil Application.

4. Shri YN Oza, learned Senior Advocate appearing on behalf of the petitioners had submitted that as such the petitioner was not required to be prematurely retired as the petitioner was fit for doing another work and therefore instead of prematurely retiring the petitioner the respondents ought to have given the petitioner another job and ought to have posted the petitioner at another place where the petitioner could have done some other work. In the alternative, Shri Oza has submitted that before any final decision could be taken prematurely retiring the petitioner on the ground of his illhealth the petitioner had already submitted an application on 22.4.1993 for voluntary retirement and therefore the same ought to have been accepted by the respondents and the

petitioner should not have been prematurely retired. He has submitted that the petitioner/heirs would be getting more benefit flowing from voluntary retirement than that of premature retirement of the petitioner and for which he has given details of benefit in the Special Civil Application. He had, therefore, alternatively prayed for direction on the respondents to accept his notice for voluntary retirement dated 22.4.1993. This petition was filed on 4th October 1993. Thereafter, it seems that the petitioner was not communicated anything with regard to taking decision on the application dated 22.4.1993 given by him with regard to voluntary retirement.

5. This Court admitted the present Special Civil Application on 26.11.1993 and fixed the same for final hearing. An affidavit-in-reply has been filed on behalf of the respondents. It is the case of respondents in the affidavit-in-reply that the Regulations which are challenged in the present Special Civil Application is neither illegal nor arbitrary. It is further submitted that the petitioner was ordered to be transferred from Central Workshop, Baroda to Bombay in the year 1990 and as the petitioner was under medical treatment an application was submitted by him with a view to postponing the transfer and transfer of the petitioner from Baroda to Bombay was for the time being postponed by the authority. However once again the petitioner made an application in the month of August 1990 requesting the authorities to either postpone the transfer or cancel the same, and since it was found by the authorities that the petitioner was trying to avoid his transfer from Baroda to Bombay for one reason or the other it was decided by the respondents to examine the petitioner by Medical Board of the Commission and the decision of the Commissioner was conveyed to the petitioner and accordingly he was medically examined by the Medical Board of the Commission on 31.1.1992 and the opinion of the Medical Board regarding fitness of the petitioner was invited. That according to the opinion of the Medical Board, the petitioner was not found physically fit to perform his duties. It is further submitted in the said affidavit-in-reply that since the petitioner was not found physically fit to perform his duties and functions, it was decided by the respondent Commission to prematurely retire him from service of the Commission in accordance with the provisions of premature retirement scheme and in accordance with the provisions of the Regulations. The decision of the Commission in that regard was approved by the Executive Committee of the respondent Commission and in that circumstances the Commission was constrained to prematurely retire the

petitioner vide its order dated 25.6.1993 in accordance with the provisions of the said scheme as well as the Regulations with effect from 30th September 1993.

6. That the present Special Civil Application came to be heard by Division Bench of this Court consisting of Mr. A.P. Ravani and Mr. D.G. Karia, JJ., on 6th December 1993 and this Court had passed the following order;

"It is an undisputed position that an employee who may have been found medically unfit can opt for voluntary retirement scheme. In view of this admitted position, the question arises - is there anything in the rule or regulations of ONGC which prevents the appropriate authority of ONGC to reconsider its decision earlier taken to put the petitioner on premature retirement on medical ground? It is also an admitted position that on this point no explanation is rendered in any of the several affidavits in reply filed on behalf of the respondent ONGC. In view of this position, respondents are granted time to explain the aforesaid position. S.O. to December 20, 1993.

The aforesaid order does not mean that the petitioner is, as a matter of fact, unfit to do the work of the post in question. This order is passed with a view to elicit the stand of the respondent Commission and will not prejudice the rights and contentions of either side."

Pursuant to that, a further reply was filed on behalf of the respondents on 7th February 1994 in which the respondents have stated that the decision of passing an order for premature retirement falls under exclusive purview of the Executive Committee, whereas decision of voluntary retirement was to be taken by the member concerned under whom the employee was working and as the decision of premature retirement was taken by the highest authority it was not open for the lower authority to review the same. Even on merits also the prayer for voluntary retirement could not be accepted as once the process of premature retirement is set in motion, acceptance and/or entertainment of request of voluntary retirement would make the provisions of premature retirement redundant and nugatory. It is further submitted in the said reply that the process of premature retirement takes a long time since the employee concerned

needs to be medically examined, and considering the representations from various authorities the decision is to be taken by the highest body in ONGC, i.e. the Executive Committee. It is further submitted in the said reply that generally during the aforesaid process the employees come to know about the action of premature retirement which is likely to be taken against him and in all such cases before an order of premature retirement is passed, an employee can opt for voluntary retirement in order to get higher benefit and making premature rules redundant and nugatory." It is further submitted in the said reply that in view of the aforesaid matter the application for voluntary retirement of the petitioner was not accepted by the ONGC since the process of premature retirement had started much before the application for voluntary retirement was made by the petitioner. Not only this even the decision of premature retirement was taken by the Executive Committee on 7.6.1993 before the retirement application had reached even the member concerned at the Headquarter and it was in this view of the matter the petitioner's application for voluntary retirement was rejected by the member concerned at the initial stage. It is pertinent to note that till date, there is no decision rejecting the application of the petitioner for voluntary retirement is placed on record of this case. However, it is submitted in the reply that the said application had been rejected in the month of September 1993.

7. I have heard the learned advocates appearing for the parties. Few facts are necessary for the purpose of determination of the present Special Civil Application.

The petitioner was sent for medical examination to the Medical Board of ONGC on 31.1.1992. Thereafter, on the basis of the report of the Medical Board it was decided by the Commission to prematurely retire the petitioner and accordingly the proceedings were initiated. In the meantime, the petitioner submitted an application on 22.4.1993 to voluntarily retire him. On 7.6.1993, a decision was taken by the Executive Committee to prematurely retire the petitioner on 7.6.1993 and an order came to be passed to prematurely retire the petitioner on 25.6.1993 with effect from 30th September 1993. Thus, the application of the petitioner for voluntary retirement was much prior to the decision that was taken by the Executive Committee, and the actual order of premature retirement of the petitioner which took place on 25.6.1993. The application of the petitioner for voluntary retirement was of 22nd April 1993. The only contention of the respondents for not

accepting the application of the petitioner for voluntary retirement is that as the process to prematurely retire the petitioner was initiated the said application cannot be granted, and another reason is that if an employee is voluntarily retired then he will be getting more benefit rather than premature retirement and therefore the application of the petitioner for voluntary retirement was not required to be granted and that therefore the same was rejected.

8. There are statutory regulations regulating the service conditions of the employees of ONGC. Regulation 25 deals with 'retirement'. Sub-regulation (1) to sub-regulation (5) of Regulation 25 of the Regulations are with regard to 'premature retirement' and sub-regulation (5) of Regulation 25 is with regard to 'voluntary retirement'. Under sub-Regulation 5 of Regulation 25, an employee may be given notice of not less than 3 months in writing to the appointing authority to retire from service after he has attained the age of 50 years. That Proviso to sub-regulation 5 will not apply to an employee referred to in sub-regulation (2) and it shall be open to the appointing authority to withhold permission (of voluntary retirement) to an employee under suspension who seeks to retire under this sub-regulation. Thus, by giving 3 months' notice an employee may make an application for voluntary retirement and only in two contingencies the ONGC can refuse or withhold the permission to voluntary retirement. When a pointed question was asked to the learned Advocate appearing on behalf of the respondents whether is there under rule or regulation by which the application of an employee for voluntary retirement can be rejected on the ground that process for premature retirement has already been initiated and/or an employee is declared medically unfit, Shri Thakkar, learned advocate appearing on behalf of the respondents has fairly submitted that as such there is no Regulation prohibiting an employee from making an application for voluntary retirement once the process for premature retirement is initiated and/or an employee is declared medically unfit. Thus, in absence of any Regulation it is not open for the ONGC to reject the application of the petitioner for voluntary retirement on the ground that process of premature retirement of the petitioner was initiated and that the petitioner was declared as medically unfit. The only other ground which has weighed with the respondents in not accepting the application of the petitioner for voluntary retirement is, that if application of the petitioner for voluntary retirement is accepted then he will be getting higher benefit than the benefit which he

was required to be given while prematurely retiring him. This submission is required to be rejected outright. If under the Scheme an employee is entitled to higher benefit, then the respondents were not justified in refusing to give the said benefit if he is entitled to otherwise, only on the ground that he will be getting higher benefit. An employee, who is in service, will always try to see that he gets the maximum benefit which he is entitled to under a scheme. Nothing is wrong if an employee wishes to get higher benefit if he is entitled to under the Scheme. Under the circumstances, the ONGC was not justified in rejecting the application of the petitioner for voluntary retirement only on the ground that he was required to be paid higher benefits while voluntarily retiring him rather than prematurely retiring him. As stated above, in absence of any statutory Regulation prohibiting an employee from making an application for voluntary retirement after the process for premature retirement has started, the ONGC was not justified in not permitting the petitioner to voluntarily retire. As stated hereinabove, when the application was given by the petitioner on 22.4.1993 much prior to the decision was taken by the Commission to prematurely retire and much prior to the passing of the order of prematurely retiring the petitioner, the respondents were not justified in prematurely retiring the petitioner when the application was given by the petitioner to voluntarily retire him prior to the decision taken by the Commission to prematurely retire him.

9. Under the circumstances, the impugned order dated 25.5.1993 passed by the respondents prematurely retiring the petitioner from service with effect from 30th September 1993 is required to be quashed and set aside for the reasons stated hereinabove and the same is quashed and set aside. The respondents are directed to reconsider the application of the petitioner for voluntary retirement dated 22.4.1993 in light of the observations made by this Court hereinabove and thereby to pay the difference of pay which the petitioner is entitled to on voluntary retirement within a period of three months from the date of decision. The respondents are directed to reconsider the decision and take appropriate decision in light of the observations made hereinabove within a period of two months from the date of receipt of writ of this order and/or production of certified copy of this order before the respondents.

10. For the reasons stated hereinabove, the Special Civil Application succeeds. Rule is made absolute to the aforesaid extent with no order as to costs.

rmr. [M.R. Shah, J.]